IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 212 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

B M GUPTA

Versus

ASHOK CHANDULAL BHATT

Appearance:

1. Criminal Misc.Application No. 212 of 2001

MR BM GUPTA for Petitioner No. 1

MR SB VAKIL for Respondent No. 1-9

MR SAMIR J DAVE APP for Respondent No. 10

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 27/07/2001

ORAL JUDGEMENT

1. Rule. Mr. S.J. Dave, Ld. APP waives service of Rule. By consent of learned advocates for the parties,

this application is being heard and disposed of finally.

2. This is an application under Section 482 of the Criminal Procedure Code, 1973 (for short "Code") for quashing and setting aside the order passed on 7.11.2000 by the learned Additional City Sessions Judge, Court No. 13 at Ahmedabad in connection with Sessions Case No. 178/1986 and also for a relief for cancelling the said order in toto.

3. It appears from the record that the aforesaid case No. 178/86 is pending before the City Sessions Court at Ahmedabad against respondent nos. 1 to 9 hereinabove. It relates to the offences punishable under Sections 302, 307, 326, 333, 148, 149, 152, 153, 506, 186, 188, read with Section 120-B and 34 of IPC and also under Section 135(1) of the Bombay Police Act.

4. The petitioner has contended that the aforesaid case is pending before the aforesaid Court on the allegation that one police Head Constable on duty was murdered and one Home Guard on duty was attacked with Dhariya with an intention to kill him but the said person was saved and therefore, the aforesaid offence was registered and ultimately, the case was committed to the Sessions court and is pending there as aforesaid.

5. The petitioner has contended that the present petitioner had applied before the City Sessions Court at Ahmedabad to permit him to appear as a third party (party in person in the proceedings) to assist the court as and when necessity arises.

6. The petitioner has contended that respondent no. 1 was a Cabinet minister in the State and respondent no. 4 was a Dy. Minister in Union Cabinet. Same way, respondent no. 3 is the brother of a State Minister and therefore, the State Government and Central Government are likely to favour the respondents. It is alleged that all the opponents are also having high influence in the State Government as well as in the Central Government as Constitutional functionaries and therefore, there are possibilities and chances that they may influence the Home Department of the Gujarat State for getting their proceedings withdrawn. It is further alleged that as the post of Public Prosecutor (for short "PP") is also a political appointment, a possibility also cannot be ruled out that the Public Prosecutor may also be influenced politically to help the contesting respondent Nos. 1 to 9.

7. The aforesaid set of averments and allegations were made before the learned Addl. Session Judge in the aforesaid sessions case and the learned Addl. Sessions Judge, after hearing the parties, dismissed the said application.

8. Feeling aggrieved by the said order of the trial Court, the petitioner has preferred this application before this Court under Section 482 of the Code.

9. It has again been contended that the contesting respondents nos. 1 to 9 are influencial persons and therefore, fair trial may not be possible and therefore, in the interest of justice, the present petitioner appearing party in person, who is a practising advocate, be permitted to be added as a party in the said proceedings and take part in the proceedings as and when necessity arises.

10. I have heard learned advocates for the parties and have perused the papers. The petitioner - Mr. B. M. Gupta, a practicing advocate - party in person argued for himself, Mr. S.B. Vakil appeared for respondent Nos. 1 to 9 and argued the matter on behalf of Respondent Nos. 1 to 9. Mr. S.J. Dave, Ld. APP appeared on behalf of Respondent No. 10 - State of Gujarat. Learned advocate for respondents and learned APP Mr. S. J. Dave, for the State have strongly opposed this application.

11. It may be noted that the following facts are not in dispute :-

(i) The aforesaid sessions case is pending before the learned Addl. City Sessions Judge at Ahmedabad.

(ii) The State is being represented by a Public Prosecutor before the Sessions Court.

(iii) The petitioner herein himself is a practising advocate.

(iv) The petitioner-advocate is not an advocate for any of respondent Nos. 1 to 9 being the original accused in the aforesaid Sessions Case.

(v) Ld. Senior advocate appearing on behalf of respondents Nos. 1 to 9 has made it clear that the present respondents Nos. 1 to 9 do not require the services of the petitioner.

(vi) Ld. APP Mr. S.J. Dave has also opposed this application meaning thereby that the State does not require the services of the present petitioner.

(vii) The trial Court has not passed any order appointing the petitioner as an advocate for assisting the court, meaning thereby, even the Court below does not require the services of the petitioner.

(viii) No witness or interested person in the sessions case pending before the trial Court has acquired the services of the present petitioner as his advocate, which would mean that the services of the petitioner are not required by them also.

(ix) In other words, neither the State, nor the defence, nor the witnesses, nor the trial Court desires to take the services of the petitioner as an advocate.

The above facts are not very much in dispute.

12. The main contention of the petitioner is that the contesting respondents are the influencial persons and personalities of the BJP and the said party is ruling the State as well as the Central Government at present and therefore, because of the above position, fair trial and justice are not expected. It is also contended that appointment of Public Prosecutor is a political appointment and therefore, when the Public Prosecutor has been appointed by the present ruling party, fair trial may not result on account of political relations between the Public Prosecutor and contesting respondents Nos. 1 to 9.

13. Now, it is not clear as to who is in charge of the prosecution before the trail Court. There may be many public prosecutors including Additional Public Prosecutors (for short "APP") appointed for conducting trial before the Sessions Court. It is not clear as to who is in charge of the prosecution at present.

14. Then there is nothing on record to show that the PP or APP in charge of the prosecution at present has been appointed by the present Government. Even, there is nothing on record to show that the said prosecutor in charge of the prosecution has any political relation with BJP.

15. Moreover, when the State Government appoints any person as PP or APP, then soon after such appointment, the PP or APP as the case may be, is expected to be a Public Prosecutor meaning thereby, he is expected to be an impartial and neutral PP. He is expected to be fair and honest and he is required to see the interest of the public only. He is required to see that fair trial is there and trial ends in justice. Therefore, even if the PP in charge of the prosecution before the sessions Court has come from a particular political party, he is expected to be a person having no affiliation with any political party after his appointment as a PP.

16. Then, so far as the present case is concerned, it is strongly contended before this Court by the petitioner, who appears in person, that the police papers have been lost and they are not yet tressed out. Sessions Case has been registered in 1986 and it is not clear if the BJP was ruling party or not when the sessions case was registered.

17. Then it is also not clear that original police papers were lost during the time when the BJP was in power.

18. It is alleged that the case is pending in the sessions court and at present the BJP party is in the Ministry and it is alleged that the original papers were misplaced by the present ruling party.

19. There is nothing on the record at present to show that original papers have been lost from the hands of the present Prosecutor in charge of the present prosecution.

20. In above view of the matter, the present Public Prosecutor cannot be held responsible for the loss of original police papers. So, there is no material before this Court to express any opinion on that aspect of the case.

21. Then it has also been contended that if the present Prosecutor remains in charge of the prosecution, then the State Government may withdraw the Sessions case before the trial Court, which would result in failure of justice. There is nothing on record to show that any Prosecutor is going to withdraw the present Sessions Case. Moreover, even if an application is submitted for withdrawal of a Sessions case before Sessions Court, then under Section 321 of the Code, the Court has to apply its

mind before granting such an application. Therefore, the State Government does not have absolute authority to withdraw the case from the Court. Such a withdrawal is always subject to the discretionary order passed by the Court after application of mind. When there is no process at present for withdrawal of the case pending before the trial Court, it would be quite premature to infer that sessions case pending before the sessions court may be withdrawn by the present PP and as and when such an application is made by the PP then also the withdrawal will have to be subject to the discretion of the court. We may refer to a recent prouncement of the Hon'ble Supreme Court on the subject in a case of ABDUL KARIM AND OTHERS VS. STATE OF KARNATAKA AND OTHERS, reported in (2000)8 SCC 710, relating to the duty, functions and powers of a Criminal Court while considering the request made by the Public Prosecutor in charge of the prosecution for withdrawal of a criminal case under Section 321 of the Code. At present, there is no proposal or contemplation for the withdrawal of the case in question under Section 321 of the Code. However, if any prayer is made by the learned Public Prosecutor before the trial Court for the consent of the Court for withdrawal of the aforesaid sessions case under Section 321 of the Code, then in that event, the learned trail Judge presiding over the Court at relevant point of time will certainly take into account the observations made and principles enunciated in the aforesaid reported case and such other decisions as may be shown to him. Therefore, there is no likelihood of any injustice being done in the matter from this angle also.

22. Moreover, it is also required to be considered that the PP is functioning as PP before sessions court. He is responsible to the State.

23. It is also contended that though the papers were not available, no action was taken by the PP. It is again a disputed question of fact. There is no material before this Court to show as how the matter had proceeded and who was responsible for the loss of papers.

24. There is nothing on record to show that the public prosecutor, was responsible for the loss of papers and there is nothing on record that the present prosecutor in charge of the prosecution has not taken any care for securing the said original police papers or for reconstruction of the papers of the investigation.

25. It is further contended that the learned prosecutor has not proceeded further for reconstruction

of the investigation.

26. Again, there is nothing on record to support this contention. At the same time, it is also not made clear as to under what provisions, the Court would pass an order for reconstruction of police papers. This is not a matter relating to the records of the court, but the matter relates to police papers and the original papers were not in the hands or custody of Court.

27. It is further contended that these papers have yet not been traced out. Again there is nothing on record to show that there was any negligence on the part of the present prosecutor, if the papers have yet not been traced-out.

28. It is further contended that if an independent person or an advocate is permitted to intervene, he can apply for reference to CBI, who can be directed to trace out the papers.

29. Now, even this can also be done by PP without any order of the Court. The matter could be referred to any authority but there is nothing on record to show that no action has been taken to trace out the papers.

30. The petitioner has also relied upon the decision of AIR 1960 RAJASTHAN 44 in the case of THE STATE VS. SOHAN LAL. A particular reference was made to the observation made in para 8, which can be reproduced for ready reference as follows :-

" We are disposed to hold the view that the trial court has such power and should exercise it whenever a legitimate occasion for doing so arises. With respect, we desire, to point out in this connection that the view which seems to have weighed with certain Courts that no procedure can be adopted howsoever reasonable and proper it may be unless there is an express provision sanctioning it in the procedural Code governing the case is hardly correct. So far as we understand, the correct principle is that in matters of procedure, a particular procedure should be considered to be permitted if it is not prohibited and not that every procedure should be taken as prohibited, unless it is provided for; and there cannot possibly be any valid objection to the adoption of this general rule in cases where no prejudice thereby can ever be caused to any party; and on the other hand, the object of

the kind of procedure sought to be adopted is to avoid such prejudice."

31. There, it has been observed that a particular procedure should be considered to be permitted if it is not prohibited.

32. On the basis of the aforesaid decision, a submission was made by the present petitioner - party in person, that if there is no express bar in the Code against permitting any third party, then the third party should be permitted and added as a party to a Sessions Case. Now, this matter relates to the procedure. Here this is not a simple matter of procedure. The petitioner requires an order for joining himself as a party to the proceedings. Therefore, the said decision will not apply to the case of the petitioner before us.

33. Then he has also relied upon another decision of NOOR TAKI @ MANNU VS. STATE OF RAJASTHAN, reported in 1986 CRL.L.J. 1488. Particular reference was made to para -19 of the said decision. The observations therein may be reproduced for ready reference as follows:-

"We are not inclined to accept the contention of the learned Public Prosecutor that since there is a specific bar under S. 306(4)(b), Cr.P.C. S.482, Cr.P.C. should not be made applicable. Their Lordships of the Supreme Court has said in times without number, that there is nothing in the Code to fetter the powers of the High Court under S. 482, Cr.P.C.. Even if there is a bar in different provisions for the three purposes mentioned in S. 482, Cr.P.C. and one glaring example quoted is that though S.397 gives a bar for interference with interlocutory orders yet S.482, Cr.P.C. has been made applicable in exceptional cases. Second revision by the same petitioner is barred yet this Court in exceptional cases invoke the provisions of S.482 Cr.P.C. Therefore, S. 482, Cr.P.C. gives ample power to this Court. However, in exceptional cases to enlarge the approver on bail, we answer the question that according to S.306(4)(b), Cr.P.C. the approver should be detained in custody till the termination of trial, if he is not already on bail, at the same time, in exceptional and reasonable cases the High Court has power under S. 482 Cr.P.C. to enlarge him on bail or in case there are circumstances to suggest that his detention had been so much

prolonged, which would otherwise outlive the period of sentence, if convicted, his detention can be declared to be illegal, as violative of Art. 12 of the Constitution."

34. He has also relied upon a decision of the Hon'ble Apex Court in the case of WILLIE (WILLIAM) SLANEY VS. STATE OF MADHYA PRADESH, reported in AIR 1956 SC 116. The particular reference was made to Paras 10, 14 and 18, which may reproduced as under :-

"Para -10 :- In any case, the courts must be guided by the plain provisions of the Code without straining at its language wherever there is an express provision".

"Para-14 :- This, in our opinion, has been the trend of the more recent decisions of the Privy Counsel and indeed of latter day criminal jurisprudence in England as well as in India. The swing of the pendulum has been away from technicality, and a greater endeavour has been made to regard the substance, rather then the shadow and to administer justice fairly and impartially as it should be administered; fair to the accused, fair to the State and fair to the vast mass of the people for whose protection penal laws are made and administered.

"Para-18 :- What we are seeking to demonstrate is that the Code has carefully classified certain kinds of error and expressly indicates how they are to be dealt with. In every such case the Court is bound to give effect to the express commands of the legislature; there is no scope for further speculation. The only class of case in which the Courts are free to reach a decision is that for which no express provision is made."

This also relates to the powers of the Court in the matter of necessity.

35. The petitioner has also relied upon one more decision of the Hon'ble Supreme Court reported in S.P. GUPTA VS. PRESIDENT OF INDIA, reported in AIR 1982 SC 149. There, it has been observed as under :-

"There can be no doubt that the petitioners have a vital interest in the independence of the judiciary and if an unconditional or illegal

action is taken by the State or any public authority which, has the effect of impairing the independence of the judiciary, the petitioners would certainly be interested in challenging the constitutionality or legality of such action. The profession of lawyers is an essential and integral part of the judicial system and lawyers may figuratively be described as priests in the temple of justice. They assist the court in dispensing justice and it can hardly be disputed that without their help, it would be well nigh impossible for the Court to administer justice. They are really and truly officers of the Court in which they daily sit and practise. They have, therefore, a special interest in preserving the integrity and independence of the judicial system and if the integrity or independence of the judiciary is threatened by any act of the State or any public authority, they would naturally be concerned about it, because, they are equal partners with the Judges in the administration of justice. "

36. A reference was also made to a decision of the Hon'ble Supreme Court in a case of CHAIRMAN RAILWAY BOARD VS. MRS. CHANDRIMA DAS AND OTHERS, reported in 2000 AIR SCW 649. Particular reference was made to para 16, which may be reproduced for ready reference as follows :-

"In S.P. Gupta Vs. Union of India, AIR 1982 SC 149 (1981) Supp SCC 87, the law relating to locus standi was explained so as to give a wider meaning to the phrase. This Court laid down that "practising lawyers have undoubtedly a vital interest in the independence of the judiciary; they would certainly be interested in challenging the validity or constitutionality or an action taken by the State or any public authority which has the effect of impairing the independence of the judiciary. It was further observed that "lawyer's profession was an essential and integral part of the judiciary system, they could figuratively be described as priests in the temple of justice. They have, therefore, a special interest in preserving the intigrity and independence of the judicial system; they are equal partners with the Judges and the administration of justice. The lawyers, either in their individual capacity or as representing some Laywers' Associations have the locus standi to challenge the circular letter addressed by the

Union Law Minister to the Governors and Chief Ministers directing that one third of the Judges of the High Court should as far as possible, be from outside the State."

37. One more decision relied upon by him can be gathered from the case of R. RATHINAM VS. THE STATE OF AND ANOTHER, reported in 2000 AIR SCW 423. There it has been held that any person can come to the Court and apply for cancellation of bail granted to the accused person.

38. The petitioner has also relied upon a case of LT. COL. P.R. CHAUDHARY (RETD.) VS. MUNICIPAL CORPORATION OF DELHI, reported in 2000 AIR SCW 2030. There, particular emphasis was on the point that even the observations made by Hon'ble Supreme Court are binding to the subordinate courts. Para - 6 of the said decision says that "Law interpreted by Supreme Court, cannot be brushed aside by saying that it is not conformity with the statutory provisions. Law laid by this Court is explicit and admits of no doubt." There cannot be any dispute about the aforesaid decision recorded by the Hon'ble Supreme Court.

39. One more decision relied by the petitioner can be gathered from the case of PUNJAB LAND DEVELOPMENT, LABOUR COURT, CNANDIGARH AND OTHERS VS. DIVISIONAL OFFICER, LABOUR COURT CHANDIGARH AND OTHERS, reported in (1990)3 SCC, page 682. The petitioner referred to para 37 and para 79 at Pages Nos. 704 and 720. The matter relates to the decision per incuriam.

40. One more decision relied upon by present petitioner is from SUO MOTU CONTEMPT PETITION (CRI.) NO. 5 OF 2000 in Re. S.K. Sundaram reported in 2000(5) SC 305. Reference was made to para 9 at page no. 311. There it has been observed that when the Court appoints an advocate as Amicus, it is for the Court to get assistance in the proceedings. Power of the Court in making such appointment is plenary and cannot be objected to by others.

41. The learned APP has relied upon a decision of the Hon'ble Supreme Court in a case of SHIVKUMAR VS. HUKAMCHAND & ANRS. reported in (1999) 7 SCC 467. It was a matter of bride burning and the brother of the deceased had engaged a private counsel to conduct the trial. The High Court had directed that the counsel appointed by the private to act under the direction from the Public

prosecutor who shall conduct the case. The Supreme Court found that the High Court has right in approaching the issue as aforesaid and, therefore, no interference was called for. It has also been observed that the prosecution in sessions case cannot be conducted by anyone other than the Public Prosecutor. That the roll of private counsel is limited to act under the direction of the Public Prosecutor. That he can submit written arguments after closure of the evidence with prior permission of the Court. The object of the provision was explained in details. It has also been observed that the duty of the Public Prosecutor is to act fairly and not merely to obtain conviction by any means fair or foul. Then it has further been observed that unlike Section 302, section 301 of the Criminal Procedure Code is applicable to all courts of criminal jurisdiction. This shows the power, right, function and duty of a private counsel appointed by a private party in a Sessions trial. When a private party can engage an Advocate, his right, powers and functions are limited. When a private complaint, legitimately interested in the proceeding of a Sessions trial and his advocate has only such a limited right, an individual - advocate or otherwise - can not claim any role to be played in a pending Sessions trial. Such a person cannot, as of right, claim to be a party to the pending Sessions trail. This decision, thus, clearly negative the contentions and the arguments of the petitioner herein.

42. Moreover, this is not a revision application under Section 397 of the Code. It has been filed u/s. 482 of the Code as Misc. Criminal Application. The order impugned is not found to be illegal or perverse. Hence, no interference is called for at this level. It is more so when the petitioner has failed to establish his right to be joined as a party in a pending sessions trail.

43. Now, in the present case, the petitioner has not been appointed as Amicus curiae and therefore, there is no question of binding nature of such an order of the Court. In above case, the court appointed an advocate as amicus curiae to get assistance in the proceedings but in the present case, the Court has not found it proper or necessary to appoint any advocate as amicus curie, nor the Court requires any assistance from the petitioner. It is not open to an advocate to apply for joining him as a party to assist the Court as an amicus curie. Whether or not any assistance is required or is necessary is a subject matter of decision and discretion of the Court below. None can say that the assistance as amicus is

required and is necessary in a particular given case.

44. The main contention of the petitioner is that the respondent Nos. 1 to 9 are highly influencial persons and therefore, there is no likelihood of fair trial and therefore, in the interest of justice, he may be permitted to be joined as a party.

45. At present, there is nothing on record to show that the present prosecutor is being influenced by respondents. No allegation is made against the present prosecutor before the trial Court. Moreover, trial of the Sessions case before Sessions Court is governed by the provisions made in the Code. Section 225 of the Code makes it clear that in every trial before a Court of Sessions, the prosecution shall be conducted by a Public Prosecutor. Then Section 226 of the Code further shows that the Pprosecutor in charge of the prosecution shall open the case of the prosecution.

46. On the aforesaid provisions an argument was advanced by the petitioner that the provisions are made for opening of the case before commitment of the case and not before the framing of charge. It is not possible to accept the above argument of the petitioner. When a prosecutor or APP in charge of the prosecution attends a particular sessions case, then even before the stage of framing of charge, he remains to be in charge of the prosecution. Therefore, even, if the charge is not framed. The PP or APP has to attend the Court to render assistance to the Court.

47. If, there is some application filed by the accused person before framing of the charge, then also the PP in charge of the prosecution has to attend the court and appear on behalf of the State before the Court. Therefore, it is not possible to accept that the PP comes in picture before sessions Court only when the charge is framed and when the case is required to be opened as required by Section 226 of the Code and not before that stage.

48. However, it is clear that the prosecution is required to be conducted by the PP and by none else.

49. The PP is being appointed in accordance with the provisions made in Section 24 of the Code, which shows that for every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors, for conducting

in such court, any prosecution, appeal or other proceeding on behalf of the Central Government or State Government, as the case may be.

50. Sub-section (3) of the Section 24 of the Code also shows that for every district, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the district;

51. Then Sub-section (4) of Section 24 of the Code also makes it clear that the District Magistrate shall, in consultation with the Sessions Judge, prepare a pannel of names of persons, who are, in his opinion, fit to be appointed as Public Prosecutors or Additional Public Prosecutors for the District.

52. It shows that the public prosecutor and APP are being appointed in consultation with the Sessions Judge. This shows that the State Government does not have exclusive power and jurisdiction to appoint Public prosecutor or APP but provision has been made that such appointments are required to be made after consulting the High Court or the sessions Judge as the case may be.

53. In view of above discussion it is difficult to accept that these appointments are purely political.

54. Even otherwise, as said above, the Public Prosecutor and Additional Public Prosecutors are required to be loyal and faithful to the State and not to the ruling party governing the State at relevant point of time. The difference between the State and Government is not unknown.

55. Then, a reference was made by petitioner as well as by learned advocate for contesting respondent no. 1 to 9 to Sub-section (2) of Section 301 of the Code. It reads as follows :-

"Clause - 2 of Section 301 :-

If in any such case any private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the Prosecutor or Assistant Public Prosecutor, and may, with the permission of the Court, submit written arguments after the evidence is closed in

the case."

56. Now, even this section makes it clear that it relates to an advocate appointed by the private person, who can assist the Public Prosecutor in accordance with the provisions made in Sub-section (2) of Section 301 of the Code.

57. This means that even a private complainant can engage an advocate to assist a PP in any Court. The Public Prosecutor or a Additional Public Prosecutor, as the case may be, in charge of the prosecution shall remain in charge of the prosecution and he is required to conduct the prosecution and the pleader so instructed shall act in the said matter under the directions of the Public Prosecutor or Additional Public Prosecutor as the case may be and with the permission of the court, such an advocate can submit written arguments after the evidence is closed in the case.

58. This shows that if a private person engages an advocate then also, the said advocate has to act in a limited manner as per sub-section (2) of Section 301 of the Code. Such an advocate cannot be engaged by a private complainant for by-passing the regular Public Prosecutor in charge of the prosecution. Such an advocate cannot independently and individually take part in the proceedings before sessions Court by-passing the regular appointed Public Prosecutor in the matter. At the same time, such an advocate can submit written arguments after the close of the case with the permission of the court. Therefore, even if the party interested in the matter, engage an advocate then that advocate has also a very limited function to be performed in the trial before the Sessions Court.

59. Looking to the provisions made in Section 225 read with Section 301(2) of the Code, it is amply clear that on one hand, this provision does not envisage for third party interference, and on the other hand, there is an implied bar against any interference of a third party. Third party may be a private individual or he may be an advocate. There is no distinction between them.

60. Then, it has also been argued by the petitioner that as an officer of the Court, the advocate has great deal of responsibility on his shoulder and he is required to do perform his duties.

61. Now when the trial has proceeded or is pending, an advocate not appearing in the matter, will not have

any function to be performed in the said pending matter. No role is attributed to him. Role of an advocate is different in the case of a Public Interest litigation or in the similar case. Nowhere, it has been stated either by the Hon'ble Supreme Court or by the Hon'ble High Court of any State that a private person, who may be an advocate can appear in the matter himself as a party and can intervene in the trail, to assist the court, even though, such assistance is not required from him either by the Court or by the State or by the parties.

62. If an advocate has been engaged by any party then he will have certain rights, responsibilities and duties with respect to that particular proceedings to protect the interest of his client. However, when the advocate has not been engaged by any of the parties, then, he has absolutely no right to appear in the matter as a party, to plead before the Court, to be in charge of the prosecution or in any other way, whatsoever.

63. The trial before Sessions Court is a trail between the State and the accused persons. It is not between the Government and accused persons. As said above, the Public Prosecutor appears are in charge of the prosecution on behalf of the State. It is not a proceeding like the proceeding of Public Interest Litigation. This is not a proceeding like a Civil Proceeding, which we call "Civil proceedings in representative capacity" under Order 1 Rule 8 of the Civil Procedure Code, 1908. This is not a proceeding in which any party can be added as a party as is being done by virtue of provisions made in Order 1 Rule 10 of the Civil Procedure Code, 1908.

64. The only provision made in the Code is that if during the course of trial, when a particular person is found to have committed an offence but he has not been joined as an accused, then the Court can proceed against the said person and join him as accused person. There also the powers and functions are limited. Reference can be made to Section 319 of the Code.

65. This shows that the Parliament has thought it fit that no interference of a third party to a pending sessions case is permitted. In Criminal Procedure Code, no such provision has been made, which may show the intention of the parliament that no third party can introduce himself to a pending criminal trial before a Sessions Court as a party to it.

66. Even otherwise on reading Section 225 with

Section 301 (2) of the Code, it is amply clear that there is absolutely no scope for introduction of a third party to join as a party, to assist the Sessions trial. Even if, these provisions are read together, it is clear that there is an implied bar against joining of any third party to a sessions case pending before the sessions Court as a party to it.

67. Public prosecutor has statutory duty to remain in charge of the prosecution and if a third party is added as party to the Sessions trial, then complications are likely to arise and therefore, it is not even in the interest of justice to permit a third party to interfere in a pending Sessions Trial.

68. It would also be relevant to consider a decision of the Hon'ble Supreme Court in a case of VINOY KUMAR VS. STATE OF U.P. AND OTHERS, reported in (2001) 4 SCC, 734. There, it has been observed as under :-

> "a third party has no locus standi to file writ petition alleging legal wrong or inquiry suffered by any individual unless it is a writ of quo warranto or habeas corpus or it is a PIL. It is further observed that an advocate cannot maintain a writ petition on behalf of his clients (accused persons) for quashing order of transfer of criminal cases passed by Sessions Court."

69. In other words, such a petition could not have been filed by the accused persons and not by the advocate on their behalf.

70. On the other hand, Mr. S.B. Vakik, Ld. Senior advocate on behalf of respondent Nos. 1 to 9 has strongly opposed the allegations and argued at length that in 1985, when the incident took place, the present BJP was not the ruling party in the State. It is further contended by him that respondent Nos. 1 and 4 were Ministers in State and Union Cabinet at some time but they have resigned from the said position and thereafter, they do not remain to be the Ministers either in the State or in the Union of India.

71. Looking to the facts and circumstances of the case and having regard to the averments made in the petition, it is found that there is no reason at present to have any danger or apprehension for failure of justice.

72. Even, reading Section 225 with Section 301(2) of

the Code, it is clear that third party cannot interfere in a criminal trial. The third party may be a private individual or he may be a practising advocate. It is also clear that though the advocates are the officers of the Court, they cannot interfere in any pending criminal proceedings even as officers of the Court as of right by joining as party to criminal proceedings.

73. Moreover, when a particular person or an advocate is permitted to be added as party, he would get statutory right of appeal, revision etc. This will also create complications in future.

74. In the aforesaid facts and circumstances of the case, I am of the opinion that the trail Court has not committed any error in disallowing the application for joining the petitioner as party to the pending Sessions Case. It should be considered here that this is not an application for Revision under Section 397 of Code. The applicant has specifically stated that this application is filed by him under Section 482 of the Code. Even under Section 482 of the Code, the powers and functions of this Court are very limited.

75. Looking to the facts and circumstances of the case and looking to the order passed by learned Addl. Sessions Judge, I am of the opinion that it is not necessary for this Court to interfere with said order by exercising inherent powers provided under Section 482 of the Code. The facts and circumstances of the case do not require the interference or intervention of this Court in exercise of the powers under Section 482 of the Code in the matter.

76. As said above, the trial is pending in the Sessions Court and the role of an advocate not engaged by any party in criminal proceedings is different than the role of an advocate in a Public Interest Litigation or litigation of that nature. No decision referred to hereinabove shows that a practising advocate or a private individual can request the court for joining him as a party, even if his assistance is not required either by the Court or by the prosecution or by the defence. No other authority has been shown to me showing that an advocate, or a private individual can join himself in a criminal trial, though his services are not required by the Court or by the State or by the defence. It is also clear that there is no express provision in law for joining of third party in the sessions trial. On the other hand, looking to the provisions made in Section 225

read with Section 301(2) of the Code, it is amply clear that there is implied bar against joining of a third party to a pending sessions trial.

77. Suffice it to say, there is no merits in the present application and therefore, this application deserves to be dismissed. In the facts and circumstances of the case, the present application filed by the petitioner is ordered to be dismissed. Rule is discharged.

78. At this stage, learned APP Mr. S.J. Dave, prays for costs. However, having regard to the facts and circumstances of the case and looking to the averments made in the application before trail court as well as in the petition before this Court, I do not find it proper to award any costs. Hence, no order as to costs.

(D.P. Buch, J.)
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